



INTERIOR BOARD OF INDIAN APPEALS

Fort Sill Apache Tribe of Oklahoma v. Acting Southwest Regional Director, Bureau of
Indian Affairs

43 IBIA 26 (04/14/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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| FORT SILL APACHE TRIBE OF | : | Order Docketing and Dismissing |
| OKLAHOMA, | : | Appeal |
| Appellant, | : | |
| | : | |
| v. | : | |
| | : | Docket No. IBIA 06-48-A |
| ACTING SOUTHWEST REGIONAL | : | |
| DIRECTOR, BUREAU OF INDIAN | : | |
| AFFAIRS, | : | |
| Appellee. | : | April 14, 2006 |

The Fort Sill Apache Tribe of Oklahoma (Tribe) filed an appeal with the Board seeking review of a January 25, 2006 letter from the Acting Southwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which denied the Tribe's request to be designated as a cooperating agency for a National Environmental Policy Act (NEPA) environmental impact statement (EIS) being prepared for the proposed Pueblo of Jemez Casino in Dona Ana County, New Mexico.

On February 28, 2006, the Board issued an order for Appellant to show cause, on or before March 15, 2006, why this appeal should not be dismissed for lack of jurisdiction because, among other things, the Regional Director had made no decision pursuant to Title 25 of the Code of Federal Regulations.

Appellant did not respond to the Board's order.

As noted in the Board's order, the only "decision" made in the Regional Director's January 25, 2006 letter was to deny the Tribe's request for cooperating agency status, based on the Council on Environmental Quality regulations for NEPA. See 40 C.F.R. §§ 1501.6, 1508.5. With exceptions not relevant here, the Board's jurisdiction over administrative decisions is limited to decisions of BIA officials made under Chapter I of Title 25 C.F.R. See 43 C.F.R. § 4.330(a). We conclude that the Board does not have jurisdiction to review a Regional Director's decision to deny a Tribe's request for cooperating agency status, at least in the absence of any decision made under Chapter I of Title 25 C.F.R., and therefore we lack jurisdiction to consider this appeal.

In addition, even assuming we had jurisdiction, and assuming that a denial of cooperating agency status is an otherwise reviewable issue, we would still dismiss this appeal. It appears that the only requirement even arguably enforceable against BIA in denying a tribal request for cooperating agency status is the provision in the Departmental Manual requiring BIA to state its reasons for the denial in writing “within the [EIS],” 516 DM 2.5E, which in this case has yet to be prepared. 1/ Thus, the matter is not ripe for review, apart from other jurisdictional constraints. 2/

For the reasons stated above, and in the absence of any response from Appellant to the Board’s show cause order, we conclude that this appeal should be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

1/ We express no opinion on the enforceability of these Departmental Manual provisions.

2/ We also express no opinion on whether the discretionary nature of a decision to deny a request for cooperating agency status precludes the Board from exercising jurisdiction under 43 C.F.R. § 4.330(b)(2) (Board shall not adjudicate matters decided by BIA through exercise of its discretionary authority).